

**§ 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?**

(a) *General.* The objective of the SBA's contracting programs is to assist small business concerns, including 8(a) BD Participants, HUBZone small business concerns, Service Disabled Veteran-Owned Small Business Concerns, Women-Owned Small Businesses and Economically Disadvantaged Women-Owned Small Businesses, in obtaining a fair share of Federal Government prime contracts, subcontracts, orders, and property sales. Therefore, these regulations apply to all types of Federal Government contracts, including Multiple Award Contracts, and contracts for architectural and engineering services, research, development, test and evaluation. Small business concerns must receive any award (including orders, and orders placed against Multiple Award Contracts) or contract, part of any such award or contract, and any contract for the sale of Government property, regardless of the place of performance, which SBA and the procuring or disposal agency determine to be in the interest of:

- (1) Maintaining or mobilizing the Nation's full productive capacity;
- (2) War or national defense programs;
- (3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or
- (4) Assuring that a fair proportion of the total sales of Government property is made to small business concerns.

(b) *SBA's responsibilities in the acquisition planning process.*

(1) *SBA Procurement Center Representative (PCR) Responsibilities.*

(i) *PCR Review.*

(A) SBA has PCRs who are generally located at Federal agencies and buying activities that have major contracting programs. At the SBA's discretion, PCRs will review all acquisitions that are not set-aside or reserved for small businesses above or below the Simplified Acquisition Threshold, to determine whether a set-aside or sole source award to a small business under one of SBA's programs is appropriate and to

identify alternative strategies to maximize the participation of small businesses in the procurement. This review includes acquisitions that are Multiple Award Contracts where the agency has not set-aside all or part of the acquisition or reserved the acquisition for small businesses. It also includes acquisitions where the agency has not set-aside orders placed against Multiple Award Contracts for small business concerns.

(B) PCRs will work with the cognizant Small Business Specialist (SBS) and agency OSDBU or OSBP as early in the acquisition process as practicable to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams and Small Business Teaming Arrangements, as prime contractors.

(C) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs may identify small businesses that are capable of performing particular requirements.

(D) PCRs will also ensure that any Federal agency decision made concerning the consolidation of contract requirements considers the use of small businesses and ways to provide small businesses with maximum opportunities to participate as prime contractors and subcontractors in the acquisition or sale of real property.

(E) PCRs will review whether, for bundled and consolidated contracts that are recompeted, the amount of savings and benefits was achieved under the prior bundling or consolidation of contract requirements, that such savings and benefits will continue to be realized if the contract remains bundled or consolidated, or such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(ii) *PCR Recommendations in General.* The PCR must recommend to the procuring activity alternative procurement methods that would increase

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small business prime contract participation if a PCR believes that a proposed procurement includes in its statement of work goods or services currently being performed by a small business and is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely; will render small business prime contract participation unlikely (*e.g.*, ensure geographical preferences are justified); is for construction and seeks to package or consolidate discrete construction projects; or if a PCR does not believe a bundled or consolidated requirement is necessary and justified. Such alternatives may include:

(A) Breaking up the procurement into smaller discrete procurements, especially construction acquisitions that can be procured as separate projects;

(B) Breaking out one or more discrete components, for which a small business set-aside may be appropriate;

(C) Reserving one or more awards for small businesses when issuing Multiple Award Contracts;

(D) Using a partial set-aside;

(E) Stating in the solicitation for a Multiple Award Contract that the orders will be set-aside for small businesses; and

(F) Where the bundled or consolidated requirement is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business contract participation to the maximum extent practicable.

(iii) *PCR Recommendations for Small Business Teaming Arrangements and Subcontracting.* The PCR will work to ensure that small business participation is maximized both at the prime contract level such as through Small Business Teaming Arrangements and through subcontracting opportunities. This may include the subcontracting considerations in source selections set forth in §125.3(g), as well as the following:

(A) Reviewing an agency's oversight of its subcontracting program, including its overall and individual assessment of a contractor's compliance with its small business subcontracting plans. The PCR will furnish a copy of the information to the SBA Commer-

cial Market Representative (CMR) servicing the contractor;

(B) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals that are expected of the contractor awardee;

(C) Recommending that the small business subcontracting goals be based on total contract dollars instead of, or in addition to, subcontract dollars;

(D) Recommending that separate evaluation factors be established for evaluating the offerors' proposed approach to small business subcontracting participation in the subject procurement, the extent to which the offeror has met its small business subcontracting goals on previous contracts; and/or the extent to which the offeror actually paid small business subcontractors within the specified number of days;

(E) Recommending that a contracting officer include an evaluation factor in a solicitation which evaluates an offeror's commitment to pay small business subcontractors within a specified number of days after receipt of payment from the Government for goods and services previously rendered by the small business subcontractor. The contracting officer will comparatively evaluate the proposed timelines. Such a commitment shall become a material part of the contract. The contracting officer must consider the contractor's compliance with the commitment in evaluating performance, including for purposes of contract continuation (such as exercising options);

(F) For bundled and consolidated requirements, recommending that a separate evaluation factor with significant weight be established for evaluating the offeror's proposed approach to small business utilization, the extent to which the offeror has met its small business subcontracting goals on previous contracts; and the extent to which the other than small business offeror actually paid small business subcontractors within the specified number of days;

(G) For bundled or consolidated requirements, recommending the solicitation state that the agency must evaluate offers from teams of small businesses the same as other offers,

with due consideration to the capabilities and past performance of all proposed subcontractors. It may also include recommending that the agency reserve at least one award to a small business prime contractor with a Small Business Teaming Arrangement;

(H) For Multiple Award Contracts and multiple award requirements above the substantial bundling threshold, recommending or requiring that the solicitation state that the agency will solicit offers from small business concerns and small business concerns with Small Business Teaming Arrangements;

(I) For consolidated contracts, ensuring that agencies have provided small business concerns with appropriate opportunities to participate as prime contractors and subcontractors and making recommendations on such opportunities as appropriate; and

(J) Recommending paragraphs (B) through (I) above apply to an ordering agency placing an order against a Multiple Award Contract or Agreement.

(2) *SBA Breakout PCR (BPCR) Responsibilities.*

(i) BPCRs are assigned to major contracting centers. A major contracting center is a center that, as determined by SBA, purchases substantial dollar amounts of other than commercial items, and which has the potential to achieve significant savings as a result of the assignment of a BPCR.

(ii) BPCRs advocate full and open competition in the Federal contracting process and recommend the breakout for competition of items and requirements which previously have not been competed. They may appeal the failure by the buying activity to act favorably on a recommendation in accord with the appeal procedures in paragraph (b)(3) of this section. BPCRs also review restrictions and obstacles to competition and make recommendations for improvement. Other authorized functions of a BPCR are set forth in 48 CFR 19.403(c) (FAR 19.403(c)) and Section 15(l) of the Small Business Act (15 U.S.C. 644(l)).

(3) *Appeals of PCR and Breakout PCR (BPCR) Recommendations.* In cases where there is disagreement between a PCR or BPCR and the contracting officer over the suitability of a particular

acquisition for a small business set-aside, partial set-aside or reserve, whether or not the acquisition is a bundled, substantially bundled or consolidated requirement, the PCR or BPCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the Secretary of the Department or head of the agency. The time limits for such appeals are set forth in FAR 19.505 (48 CFR 19.505).

(c) *Procuring Agency Responsibilities.*

(1) *Requirement to Foster Small Business Participation.* The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors and subcontractors in the contracting opportunities of the Government regardless of the place of performance of the contract. In addition, Federal agencies must ensure that all bundled and consolidated contracts contain the required analysis and justification and provide small business concerns with appropriate opportunities to participate as prime contractors and subcontractors. Agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, 8(a) BD small business concerns (including those owned by ANCs, Indian Tribes and NHOs), and small business concerns owned and controlled by women;

(ii) Avoid unnecessary and unjustified bundling of contracts or consolidation of contract requirements that inhibits or precludes small business participation in procurements as prime contractors;

(iii) Follow the limitations on use of consolidated contracts;

(iv) With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under 15 U.S.C. 694b, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work; and

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(v) Provide SBA the necessary information relating to the acquisition under review at least 30 days prior to issuance of a solicitation. This includes providing PCRs (to the extent allowable pursuant to their security clearance) copies of all documents relating to the acquisition under review, including, but not limited to, the performance of work statement/statement of work, technical data, market research, hard copies or their electronic equivalents of Department of Defense (DoD) Form 2579 or equivalent, and other relevant information. The DoD Form 2579 or equivalent must be sent electronically to the PCR (or if a PCR is not assigned to the procuring activity, to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(2) *Requirement for market research.* Each agency, as part of its acquisition planning, must conduct market research to determine the type and extent of foreseeable small business participation in the acquisition. In addition, each agency must conduct market research and any required analysis and justifications before proceeding with an acquisition strategy that could lead to a bundled, substantially bundled, or consolidated contract. The purpose of the market research and analysis is to determine whether the bundling or consolidation of the requirements is necessary and justified and all statutory requirements for such a strategy have been met. Agencies should be as broad as possible in their search for qualified small businesses, using key words as well as NAICS codes in their examination of the System for Award Management (SAM) and the Dynamic Small Business Search (DSBS), and must not place unnecessary and unjustified restrictions when conducting market research (*e.g.*, requiring that small businesses prove they can provide the best scientific and technological sources) when determining whether to set-aside, partially set-aside, reserve or sole source a requirement to small businesses. During the market research phase, the acquisition team must consult with the applicable PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area

Office serving the area in which the buying activity is located) and the activity's Small Business Specialist.

(3) *Proposed Acquisition Strategy.* A procuring activity must provide to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance:

(i) A copy of a proposed acquisition strategy (*e.g.*, DoD Form 2579, or equivalent) whenever a proposed acquisition strategy:

(A) Includes in its description goods or services the magnitude of the quantity or estimated dollar value of which would render small business prime contract participation unlikely;

(B) Seeks to package or consolidate discrete construction projects;

(C) Is a bundled or substantially bundled requirement; or

(D) Is a consolidation of contract requirements;

(ii) A written statement explaining why, if the proposed acquisition strategy involves a bundled or consolidated requirement, the procuring activity believes that the bundled or consolidated requirement is necessary and justified; the analysis required by paragraph (d)(2)(i) of this section; the acquisition plan; any bundling information required under paragraph (d)(3) of this section; and any other relevant information. The PCR and agency OSDBU or OSBP, as applicable, must then work together to develop alternative acquisition strategies identified in paragraph (b)(1) of this section to enhance small business participation;

(iii) All required clearances for the bundled, substantially bundled, or consolidated requirement; and

(iv) A written statement explaining why—if the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects—

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured through separate discrete projects.

(4) *Procuring Agency Small Business Specialist (SBS) Responsibilities.*

(i) As early in the acquisition planning process as practicable—but no later than 30 days before the issuance of a solicitation, or prior to placing an order without a solicitation—the procuring activity must coordinate with the procuring activity's SBS when the acquisition strategy contemplates an acquisition meeting the dollar amounts set forth for substantial bundling. If the acquisition strategy contemplates Multiple Award Contracts or orders under the GSA Multiple Award Schedule Program or a task or delivery order contract awarded by another agency, these thresholds apply to the cumulative estimated value of the Multiple Award Contracts or orders, including options. The procuring activity is not required to coordinate with its SBS if the contract or order is entirely set-aside for small business concerns, or small businesses under one of SBA's small business programs, as authorized under the Small Business Act.

(ii) The SBS must notify the agency OSDBU or OSBP if the agency's acquisition strategy or plan includes bundled or consolidated requirements that the agency has not identified as bundled, or includes unnecessary or unjustified bundling of requirements. If the strategy involves substantial bundling, the SBS must assist in identifying alternative strategies that would reduce or minimize the scope of the bundling.

(iii) The SBS must coordinate with the procuring activity and PCR on all required determinations and findings for bundling and/or consolidation, and acquisition planning and strategy documentation.

(5) *OSDBU and OSBP Oversight Functions.* The Agency OSDBU or OSBP must:

(i) Conduct annual reviews to assess the:

(A) Extent to which small businesses are receiving their fair share of Federal procurements, including contract opportunities under programs administered under the Small Business Act;

(B) Adequacy of the bundling or consolidation documentation and justification; and

(C) Adequacy of actions taken to mitigate the effects of necessary and justified contract bundling or consolidation on small businesses (*e.g.*, review agency oversight of prime contractor subcontracting plan compliance under the subcontracting program);

(ii) Provide a copy of the assessment under paragraph (c)(5)(i) of this section to the agency head and SBA's Administrator;

(iii) Identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the SBA to revise the procurement strategies for such proposed solicitations to increase the probability of participation by small businesses as prime contractors through Small Business Teaming Arrangements;

(iv) Facilitate small business participation as subcontractors and suppliers, if a solicitation for a substantially bundled contract is to be issued;

(v) Assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of Title 31 or any other protection for contractors or subcontractors (including suppliers) that is included in the FAR or any individual agency supplement to such Government-wide regulation;

(vi) Cooperate, and consult on a regular basis with the SBA with respect to carrying out these functions and duties;

(vii) Make recommendations to contracting officers as to whether a particular contract requirement should be awarded to any type of small business.

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The Contracting Officer must document any reason not to accept such recommendations and include the documentation in the appropriate contract file; and

(viii) Coordinate on any acquisition planning and strategy documentation, including bundling and consolidation determinations at the agency level.

(6) *Communication on Achieving Goals.* All Senior Procurement Executives, senior program managers, Directors of OSDBU or Directors of OSBP must communicate to their subordinates the importance of achieving small business goals and ensuring that a fair proportion of awards are made to small businesses.

(d) *Contract Consolidation and Bundling.*

(1) *Limitation on the Use of Consolidated Contracts.*

(i) An agency may not conduct an acquisition that is a consolidation of contract requirements unless the Senior Procurement Executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy:

(A) Conducts adequate market research;

(B) Identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;

(C) Makes a written determination, which is coordinated with the agency's OSDBU/OSBP, that the consolidation of contract requirements is necessary and justified;

(D) Identifies any negative impact by the acquisition strategy on contracting with small business concerns; and

(E) Ensures that steps will be taken to include small business concerns in the acquisition strategy.

(ii) A Senior Procurement Executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified.

(A) A consolidation of contract requirements may be necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (d)(1)(i)(B).

(B) The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to: benefits equivalent to 10 percent of the contract or order value (including options) where the contract or order value is \$94 million or less; or benefits equivalent to 5 percent of the contract or order value (including options) or \$9.4 million, whichever is greater, where the contract or order value exceeds \$94 million.

(C) Savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the Senior Procurement Executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement. To be substantial, such administrative or personnel cost savings must be at least 10 percent of the contract value (including options).

(iii) Each agency must ensure that any decision made concerning the consolidation of contract requirements considers the use of small businesses and ways to provide small businesses with opportunities to participate as prime contractors and subcontractors in the acquisition.

(iv) If the consolidated requirement is also considered a bundled requirement, then the contracting officer must instead follow the provisions regarding bundling set forth in paragraphs (d)(2) through (7) of this section.

(2) *Limitation on the Use of Contract Bundling.*

(i) When the procuring activity intends to proceed with an acquisition involving bundled or substantially bundled procurement requirements, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(ii) A bundled requirement is necessary and justified if, as compared to the benefits that the procuring activity would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits. The procuring activity must quantify the identified benefits and explain how their impact would be measurably substantial. The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to:

(A) Benefits equivalent to 10 percent of the contract or order value (including options), where the contract or order value is \$94 million or less; or

(B) Benefits equivalent to 5 percent of the contract or order value (including options) or \$9.4 million, whichever is greater, where the contract or order value exceeds \$94 million.

(iii) Notwithstanding paragraph (d)(2)(ii) of this section, the Senior Procurement Executives or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense and the Deputy Secretary or equivalent in civilian agencies may, on a non-delegable basis, determine that a bundled requirement is necessary and justified when:

(A) There are benefits that do not meet the thresholds set forth in paragraph (d)(2)(ii) of this section but, in the aggregate, are critical to the agency's mission success; and

(B) The procurement strategy provides for maximum practicable participation by small business.

(iv) The reduction of administrative or personnel costs alone must not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be bundled (including options). To be substantial, such administrative or personnel cost savings must be at least 10 percent of the contract value (including options).

(v) In assessing whether cost savings and/or a price reduction would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(vi) The substantial benefit analysis set forth in paragraph (d)(2)(ii) of this section is still required where a requirement is subject to a Cost Comparison Analysis under OMB Circular A-76.

(3) *Limitations on the Use of Substantial Bundling.* Where a proposed procurement strategy involves a Substantial Bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

(i) The analysis for bundled requirements set forth in paragraph (d)(2)(i) of this section;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(iii) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement;

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and

(v) The identification of the alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives (*i.e.*, consider the strategies under paragraph (b)(1)(ii) of this section).

(4) *Significant Subcontracting Opportunities in Justified Consolidated, Bundled and Substantially Bundled Requirements.*

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(i) Where a justified consolidated, bundled, or substantially bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers:

(A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and

(B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified above.

(5) *Notification to Current Small Business Contractors of Intent to Bundle.* The procuring activity must notify each small business which is performing a contract that it intends to bundle that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled or substantially bundled requirement. The procuring activity, at that time, should also provide to the small business the name, phone number and address of the applicable SBA PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located). This notification must be documented in the contract file.

(6) *Notification to Public of Rationale for Bundled Requirement.* The head of a Federal agency must publish on the agency's Web site a list and rationale for any bundled requirement for which the agency solicited offers or issued an award. The notification must be made within 30 days of the agency's data certification regarding the validity and verification of data entered in that Federal Procurement Data Base to the Office of Federal Procurement Policy. However, to foster transparency in Federal procurement, the agency is encouraged to provide such notification before issuance of the solicitation.

(7) *Notification to SBA of Recompeted Bundled or Consolidated Requirement.* For each bundled or consolidated contract that is to be recompeted (even if additional requirements have been added or deleted) the procuring agency must notify SBA's PCR as soon as possible but no later than 30 days prior to issuance of the solicitation of:

(i) The amount of savings and benefits achieved under the prior bundling or consolidation of contract requirements;

(ii) Whether such savings and benefits will continue to be realized if the contract remains bundled or consolidated; and

(iii) Whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(e) *Multiple Award Contracts.*

(1) *General.*

(i) The contracting officer must set-aside a Multiple Award Contract if the requirements for a set-aside are met. This includes set-asides for small businesses, 8(a) Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs.

(ii) The contracting officer in his or her discretion may partially set-aside or reserve a Multiple Award Contract, or set aside, or preserve the right to set aside, orders against a Multiple Award Contract that was not itself set aside for small business. The ultimate decision of whether to use any of the above-mentioned tools in any given procurement action is a decision of the contracting agency.

(iii) The procuring agency contracting officer must document the contract file and explain why the procuring agency did not partially set-aside or reserve a Multiple Award Contract, or set-aside orders issued against a Multiple Award Contract, when these authorities could have been used.

(2) *Total Set-aside of Multiple Award Contracts.*

(i) The contracting officer must conduct market research to determine whether the "rule of two" can be met. If the "rule of two" can be met, the contracting officer must follow the procedures for a set-aside set forth in paragraph (f) of this section.



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(ii) The contracting officer must assign a NAICS code to the solicitation for the Multiple Award Contract and each order pursuant to § 121.402(c) of this chapter. *See* § 121.404 for further determination on size status for the Multiple Award Contract and each order issued against that contract.

(iii) When drafting the solicitation for the contract, agencies should consider an “on-ramp” provision that permits the agency to refresh the awards by adding more small business contractors throughout the life of the contract. Agencies should also consider the need to “off-ramp” existing contractors that no longer qualify as small for the size standard corresponding to the NAICS code assigned to the contract (*e.g.*, termination for convenience).

(iv) A business must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, during each performance period of the contract (*e.g.*, the base term and each subsequent option period). However, the contracting officer, in his or her discretion, may require the contractor perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

### (3) *Partial Set-asides of Multiple Award Contracts.*

(i) A contracting officer may partially set-aside a multiple award contract when: market research indicates that a total set-aside is not appropriate; the procurement can be broken up into smaller discrete portions or discrete categories such as by Contract Line Items, Special Item Numbers, Sectors or Functional Areas or other equivalent; and two or more small business concerns, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs are expected to submit an offer on the set-aside part or parts of the requirement at a fair market price. A contracting officer has the discretion, but is not required, to set-aside the discrete portions or categories for different small businesses participating in SBA’s small business programs (*e.g.*, CLIN 0001, 8(a) set-aside; CLIN 0002, HUBZone set-aside; CLIN 0003, SDVO SBC set-aside; CLIN

0004, WOSB set-aside; CLIN 0005 EDWOSB set-aside; CLIN 0006, small business set-aside). If the contracting officer decides to partially set-aside a Multiple Award Contract, the contracting officer must follow the procedures for a set-aside set forth in paragraph (f) of this section for the part or parts of the contract that have been set-aside.

(ii) The contracting officer must assign a NAICS code and corresponding size standard to the solicitation for the Multiple Award Contract and each order issued against the Multiple Award Contract pursuant to § 121.402(c) of this chapter. *See* § 121.404 for further determination on size status for the Multiple Award Contract and each order issued against that contract.

(iii) A contracting officer must state in the solicitation that the small business will not compete against other-than-small businesses for any order issued against that part or parts of the Multiple Award Contract that are set-aside.

(iv) A contracting officer must state in the solicitation that the small business will be permitted to compete against other-than-small businesses for an order issued against the portion of the Multiple Award Contract that has not been partially set-aside if the small business submits an offer for the non-set-aside portion. The business concern will not have to comply with the limitations on subcontracting (*see* § 125.6) and the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed and awarded under the portion of the contract that is not set-aside.

(v) When drafting the solicitation for the contract, agencies should consider an “on ramp” provision that permits the agency to refresh these awards by adding more small business contractors to that portion of the contract that was set-aside throughout the life of the contract. Agencies should also consider the need to “off ramp” existing contractors that no longer qualify as small for the size standard corresponding to the NAICS code assigned to the contract (*e.g.*, termination for convenience).

(vi) The small business must submit one offer that addresses each part of

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the solicitation for which it wants to compete. A small business (or 8(a) Participant, HUBZone SBC, SDVO SBC or EDWOSB) is not required to submit an offer on the part of the solicitation that is not set-aside. However, a small business may choose to submit an offer on the part or parts of the solicitation that have been set-aside and/or on the parts that have not been set-aside.

(vii) A small business must comply with the applicable limitations on subcontracting provisions (*see* §125.6) and the nonmanufacturer rule (*see* §121.406(b)), if applicable, during each performance period of the contract (e.g., during the base term and then during option period thereafter). However, the contracting officer, in his or her discretion, may require the contractor perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(4) *Reserves of Multiple Award Contracts Awarded in Full and Open Competition.* (i) A contracting officer may reserve one or more awards for small business where:

(A) The market research and recent past experience evidence that—

(1) At least two small businesses, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs could perform one part of the requirement, but the contracting officer was unable to divide the requirement into smaller discrete portions or discrete categories by utilizing individual Contract Line Items (CLINs), Special Item Numbers (SINs), Functional Areas (FAs), or other equivalent; or

(2) At least one small business, 8(a) BD Participant, HUBZone SBC, SDVO SBC, WOSB or EDWOSB can perform the entire requirement, but there is not a reasonable expectation of receiving at least two offers from small business concerns, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs at a fair market price for all the work contemplated throughout the term of the contract; or

(B) The contracting officer makes:

(1) Two or more contract awards to any one type of small business concern (e.g., small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB) and competes any orders solely amongst

the specified types of small business concerns if the “rule of two” or any alternative set-aside requirements provided in the small business program have been met;

(2) Several awards to several different types of small businesses (e.g., one to 8(a), one to HUBZone, one to SDVO SBC, one to WOSB or EDWOSB) and competes any orders solely amongst all of the small business concerns if the “rule of two” has been met; or

(3) One contract award to any one type of small business concern (e.g., small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB) and subsequently issues orders directly to that concern.

(ii) If the contracting officer decides to reserve a multiple award contract established through full and open competition, the contracting officer must assign a NAICS code to the solicitation for the Multiple Award Contract and each order issued against the Multiple Award Contract pursuant to §121.402(c) of this chapter. *See* §121.404 for further determination on size status for the Multiple Award Contract and each order issued against that contract.

(iii) A contracting officer must state in the solicitation that if there are two or more contract awards to any one type of small business concern (e.g., small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB), the agency may compete any orders solely amongst the specified types of small business concerns if the “rule of two” or an alternative set-aside requirement provided in the small business program have been met.

(iv) A contracting officer must state in the solicitation that if there are several awards to several different types of small businesses (e.g., one to 8(a), one to HUBZone, one to SDVO SBC, one to WOSB or EDWOSB), the agency may compete any orders solely amongst all of the small business concerns if the “rule of two” has been met.

(v) A contracting officer must state in the solicitation that if there is only one contract award to any one type of small business concern (e.g., small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB), the agency may

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issue orders directly to that concern for work that it can perform.

(vi) A contracting officer may, but is not required to, set forth targets in the contract showing the estimated dollar value or percentage of the total contract to be awarded to small businesses.

(vii) A small business offeror must submit one offer that addresses each part of the solicitation for which it wants to compete.

(viii) Small businesses are permitted to compete against other-than-small businesses for an order issued against the Multiple Award Contract if agency issued the small business a contract for those supplies or services.

(ix) A business must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, for any order issued against the Multiple Award Contract if the order is set aside or awarded on a sole source basis. However, a business need not comply with the limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed amongst small and other-than-small business concerns.

(5) *Reserve of Multiple Award Contracts that are Bundled.*

(i) If the contracting officer decides to reserve a multiple award contract established through full and open competition that is a bundled contract, the contracting officer must assign a NAICS code to the solicitation for the Multiple Award Contract and each order issued against the Multiple Award Contract pursuant to § 121.402(c) of this chapter. *See* § 121.404 for further determination on size status for the Multiple Award Contract and each order issued against that contract.

(ii) The Small Business Teaming Arrangement must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, on all orders issued against the Multiple Award Contract, although the cooperative efforts of the team members will be considered in determining whether the subcontracting

limitations requirement is met (*see* § 125.6(j)).

(iii) Team members of the Small Business Teaming Arrangement will not be affiliated for the specific solicitation or contract (*see* § 121.103(b)(8)).

(6) *Set-aside of orders against Full and Open Multiple Award Contracts.*

(i) Notwithstanding the fair opportunity requirements set forth in 10 U.S.C. 2304c and 41 U.S.C. 253j, the contracting officer has the authority to set-aside orders against Multiple Award Contracts that were competed on a full and open basis.

(ii) The contracting officer may state in the solicitation and resulting contract for the Multiple Award Contract that:

(A) Based on the results of market research, orders issued against the Multiple Award Contract will be set-aside for small businesses or any subcategory of small businesses whenever the “rule of two” or any alternative set-aside requirements provided in the small business program have been met; or

(B) The agency is preserving the right to consider set-asides using the “rule of two” or any alternative set-aside requirements provided in the small business program, on an order-by-order basis.

(iii) For the acquisition of orders valued at or below the simplified acquisition threshold (SAT), the contracting officer may set-aside the order for small businesses, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs in accordance with the relevant program’s regulations. For the acquisition of orders valued above the SAT, the contracting officer shall first consider whether there is a reasonable expectation that offers will be obtained from at least two 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs in accordance with the program’s regulations, before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs.

(iv) The contracting officer must assign a NAICS code to the solicitation for each order issued against the Multiple Award Contract pursuant to § 121.402(c) of this chapter. *See* § 121.404

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for further determination on size status for each order issued against that contract.

(v) A business must comply with applicable limitations on subcontracting provisions (*see* §125.6) and the non-manufacturer rule (*see* §121.406(b)), if applicable in the performance of each order that is set-aside against the contract.

(7) *Tiered evaluation of offers, or cascading.* An agency cannot create a tiered evaluation of offers or “cascade” unless it has specific statutory authority to do so. This is a procedure used in negotiated acquisitions when the contracting officer establishes a tiered or cascading order of precedence for evaluating offers that is specified in the solicitation, which states that if no award can be made at the first tier, it will evaluate offers at the next lower tier, until award can be made. For example, unless the agency has specific statutory authority to do so, an agency is not permitted to state an intention to award one contract to an 8(a) BD Participant and one to a HUBZone SBC, but only if no awards are made to 8(a) BD Participants.

(f) *Contracting Among Small Business Programs.* (1) *Acquisitions Valued At or Below the Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) *Acquisitions Valued Above the Simplified Acquisition Threshold.* (i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from

at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror’s certifications in the System for Award Management (SAM) (or successor system) and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

[61 FR 3312, Jan. 31, 1996, as amended at 63 FR 31908, June 11, 1998; 64 FR 57370, Oct. 25, 1999; 65 FR 45833, July 26, 2000; 68 FR 60012, Oct. 20, 2003; 74 FR 46887, Sept. 14, 2009; 75 FR 62281, Oct. 7, 2010; 76 FR 63547, Oct. 12, 2011; 77 FR 1860, Jan. 12, 2012; 78 FR 61135, Oct. 2, 2013]

### **§ 125.3 What types of subcontracting assistance are available to small businesses?**

(a) *General.* The purpose of the subcontracting assistance program is to provide the maximum practicable subcontracting opportunities for small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, certified HUBZone small business concerns, certified small business concerns owned and controlled by socially and economically disadvantaged individuals, and